

December 10, 2020

Mr. Kome Ajise, Executive Director
Southern California Association of Governments (SCAG)
900 Wilshire Boulevard, Suite 1700
Los Angeles, California 90017

RE: Comment on the City of Los Alamitos' Appeal of Its Share of the Regional Housing Needs Assessment Allocation

Dear Director Ajise,

The Public Law Center ("PLC") is a 501(c)(3) legal services organization that provides free civil legal services to low-income individuals and families across Orange County. We provide services across a range of substantive areas of law, including consumer, family, immigration, housing, and health law. Specifically, the mission of our Housing and Homelessness Prevention Unit includes preserving and expanding affordable housing.

I write on behalf of individuals in need of affordable housing in Orange County to comment on the City of Los Alamitos' ("the City") appeal of its allocated share of the regional housing need as part of the Southern California Association of Government's ("SCAG") Draft Regional Housing Needs Assessment ("RHNA") Allocation Plan.

Appeal Requirements

Appeals are required to be based on comparable data available for all jurisdictions and the accepted planning methodology, be supported by adequate documentation, and include a statement as to why the revision is necessary to further the intent of the objectives listed in Section 65584(d).¹ Further, appeals must be consistent with, and not to the detriment of, the development pattern in the sustainable communities strategy, or SCAG's Connect SoCal Plan.²

Permitted Bases of Appeal

Pursuant to Government Code Section 65584.05, a jurisdiction can only appeal its RHNA allocation based on failure to determine the allocation in accordance with the adopted methodology, failure to consider local planning factors and information affirmatively furthering fair housing ("AFFH"), or significant and unforeseen changed in circumstances. Here, the City has appealed on all three bases requesting that its current allocation be reduced from 767 to 267.

Methodology

An appeal based on methodology addresses SCAG's failure to determine the share of the regional housing need: (1) in accordance with the information described in Section 65584.04, (2) in accordance with the adopted methodology established in Section 65584.04, and (3) in a manner that furthers, and does not undermine, the intent of the objectives listed in Section 65584(d).³ However, the City's appeal does not focus on any failure of SCAG to correctly apply

¹ Cal. Gov. Code § 65584.05.

² Cal. Gov. Code § 65584.05(b) and 65080(b)(2).

³ Cal. Gov. Code § 65584.05(b)(2).

the adopted methodology to Los Alamitos, rather it objects to the methodology itself and goes so far as to suggest that an entirely different methodology, that of the 5th Cycle, should be applied to the City.

First, the City claims that the adopted methodology fails to further the intent and objectives of state housing law as required by Section 65584(d). However, this is contrary to the findings of HCD. On January 13, 2020, the Department of Housing and Community Development (“HCD”) sent SCAG a letter reviewing SCAG’s Draft RHNA Methodology.⁴ HCD specifically notes that the objective listed in Section 65584(d)(4) is furthered by the social equity adjustment factor included in the draft RHNA Methodology and found that the draft RHNA Methodology furthers all of the five statutory objectives of RHNA.⁵ The City specifically takes issue with the redistribution of residual need from Disadvantage Communities (DACs) to other jurisdictions within the County claiming that this reallocation undermines the intent of state housing laws. However, as the methodology itself points out, this redistribution is specifically designed to affirmatively further fair housing objectives, a requirement of state housing law, and it accomplishes this on a regional level by allocating residual housing need from DACs to jurisdictions that have been identified as opportunity areas.⁶

Second, the City seems to take issue with the manner in which the methodology was adopted and SCAG’s failure to keep the City informed throughout the process. However, this is not an authorized basis for an appeal.

Therefore, based on HCD’s determination that the methodology meets the intent and objectives of state housing law and based on relevant statutes and its own guidance, SCAG should not grant the City’s appeal on these bases and should not apply an entirely different methodology to the City as suggested in its appeal.

Local Planning Factors and Information Affirmatively Furthering Fair Housing

A jurisdiction may appeal its RHNA allocation based on local planning factors and information affirmatively furthering fair housing if SCAG failed to adequately consider the information submitted pursuant to Section 65584.04(b).⁷ The City has based their appeal on the following factors: Lack of capacity for sewer or water service;⁸ The availability of land suitable for urban development or for conversion to residential use, the availability of underutilized land, and opportunities for infill development and increased residential densities;⁹ and Lands preserved or protected from urban development under existing federal or state programs, or both,

⁴ HCD Letter to SCAG Regarding Review of Draft Regional Housing Need Allocation (RHNA) Methodology (January 13, 2020).

⁵ HCD Letter to SCAG Regarding Review of Draft Regional Housing Need Allocation (RHNA) Methodology, 3 (January 13, 2020).

⁶ Final RHNA Allocation Methodology, 11-12 (March 5, 2020)

⁷ Cal. Gov. Code § 65584.05(b)(1).

⁸ Due to federal or state laws, regulations or regulatory actions, or supply and distribution decisions made by a sewer or water service provider other than the local jurisdiction that preclude the jurisdiction from providing necessary infrastructure for additional development during the planning period. Cal. Gov. Code § 65584.04(e)(2)(A).

⁹ Cal. Gov. Code § 65584.04(e)(2)(B).

designed to protect open space, farmland, environmental habitats, and natural resources on a long-term basis.¹⁰

While we are sympathetic to the fact that the Joint Forces Training Base occupies a large portion of the City, the appeal seems to focus on the lack of vacant land, the built-out nature of the City, and building restrictions currently in place. However, a local jurisdiction's existing zoning ordinance and land use restrictions, including but not limited to, the contents of the local jurisdiction's general plan, is not a permitted basis for an appeal.¹¹ SCAG may not limit its consideration of suitable housing sites or land suitable for urban development to existing zoning ordinances and land use restrictions of a locality.¹² SCAG shall consider the potential for increased residential development under alternative zoning ordinances and land use restrictions.¹³

As to the lack of sewer or water capacity, the City simply states that the increased housing production would put a strain on the current infrastructure, but provides no data or evidence to support this claim, as is required for any appeal. Additionally, while the City states that it does not operate its own water and sewer services, it fails to explain how "decisions made by [the] sewer or water service provider . . . preclude the jurisdiction from providing necessary infrastructure for additional development during the planning period" as required by statute.¹⁴

Since the City's appeal based on local factors is either not permitted or fails to meet the statutory requirements, it should not be granted.

Changed Circumstances

A jurisdiction may appeal its RHNA allocation if it has experienced a significant and unforeseen change in circumstances after April 30, 2019 that merits a revision of the information submitted pursuant to subdivision (b) of Section 65584.04.¹⁵ Only the jurisdiction where the change occurred may appeal its RHNA on this basis.¹⁶ Similar to many other jurisdictions, the City bases its appeal due to a significant and unforeseen change in circumstance on the COVID-19 Pandemic. We do not doubt that the City has experienced significant economic impacts due to the Pandemic. However, this is a truly unfortunate circumstance in which all SCAG jurisdictions currently find themselves. An appeal granted on this basis would have to be granted for every jurisdiction.

If SCAG approves a reduction of the units allocated to the City on this basis, it will have to reallocate those units throughout rest of the region to jurisdictions that are likely experiencing

¹⁰ This includes land zoned or designated for agricultural protection or preservation that is subject to a local ballot measure that was approved by the voters of that jurisdiction that prohibits or restricts conversion to nonagricultural uses. Cal. Gov. Code § 65584.04(e)(2)(C).

¹¹ Cal. Gov. Code Section 65584.04(e)(2)(B).

¹² Cal. Gov. Code Section 65584.04(e)(2)(B).

¹³ Cal. Gov. Code Section 65584.04(e)(2)(B).

¹⁴ Cal. Gov. Code § 65584.04(e)(2)(A).

¹⁵ Cal. Gov. Code § 65584.04(b)(3); SCAG, 6th RHNA Cycle Appeals Procedures, I.C.3.

¹⁶ Cal. Gov. Code § 65584.04(b)(3).

a similar, temporary drop in employment.¹⁷ While the impact of the COVID-19 pandemic cannot be understated, the duration or lasting nature of those impacts cannot be predicted at this time and may not even last the term of the housing element cycle, as was the case with the previous economic downturn and the 5th Cycle. Without evidence that the COVID-19 pandemic will continue to restrict the population's movement and employment in the same manner for the next eight (8) years, it would be unreasonable to use current data as a justification for the reduction of the City's RHNA allocation for the entire 6th Cycle. Additionally, while the pandemic has changed circumstances for cities, it has also amplified and exacerbated the state's housing crisis. Therefore, SCAG should consider the impact of COVID-19 across the entire region and should not grant the City's appeal on this basis.

Conclusion

Maintaining the City's share of the RHNA allocation as drafted is imperative to increase a diverse housing supply, promote development and socioeconomic equity, improve the relationship between jobs and housing, encourage affordable housing, and affirmatively further fair housing. To promote these objectives, SCAG should consider this information and deny the City's appeal.

Sincerely,

THE PUBLIC LAW CENTER, BY:



Alexis Mondares, Housing and Homelessness Prevention Unit, Legal Fellow
Richard Walker, Housing and Homelessness Prevention Unit, Senior Staff Attorney

¹⁷ A determination that the pandemic constitutes a change in circumstances justifying a reduction in RHNA would be futile, as all jurisdictions would be eligible for this reduction and the reduced units from all of the jurisdictions would simply be redistributed back to the same jurisdictions resulting in substantially no net change in the allocation.